

Shapiro, DiCaro & Barak, LLC
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Hearing Date: September 11, 2012 at 10:00 am
Objection Deadline: September 4, 2012

Attorneys for EverBank

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

RESIDENTIAL CAPITAL, LLC, *et al.*

Debtors.

Chapter 11

Case No. 12-12020 (MG)

(Jointly Administered)

x

Case No. 12-12032

**NOTICE OF MOTION SEEKING AN ORDER GRANTING RELIEF
FROM THE AUTOMATIC STAY PURSUANT
TO 11 U.S.C § 362(a) AND FEDERAL BANKRUPTCY RULE 4001**

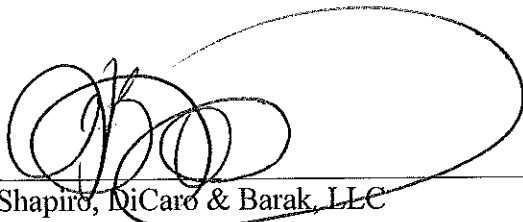
PLEASE TAKE NOTICE that EverBank (“Movant”) seeks relief from the automatic stay as to the property located at 1917 East Concord Street, Orlando, Florida (the “Premises”) and will move before the Honorable Martin Glenn, United States Bankruptcy Judge in the Courtroom located at the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, NY 10004 on September 11, 2012 at 10 a.m., or as soon thereafter as counsel may be heard, for an Order:

1. Pursuant to Bankruptcy Rule 4001 and 11 U.S.C 105(a) and 362(d) Movant, its agents Successors and/or assigns, seek relief from the automatic stay as to Movant’s interest in real property known as 1917 East Concord Street, Orlando, Florida; and

2. Waiving the fourteen (14) day stay invoked pursuant to F.R.B.P. 4001(a)(3); and
3. Granting Movant such other and further relief as it just and proper.

PLEASE TAKE FURTHER NOTICE, that objections, if any, to the relief herein requested shall be in writing, shall state with particularity the grounds for the objection, shall be filed with the Clerk of the Bankruptcy Court and served upon, the undersigned counsel for the Movant seven (7) days prior to the return date and upon any other person whose interests would be affected if the objection is sustained

Dated: August 11, 2012



Shapiro, DiCaro & Barak, LLC
By: Shari S. Barak
Attorneys for EverBank
105 Maxess Road, Suite N109
Melville, NY 11747
(631)844-9611

TO: See attached Service list

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

RESIDENTIAL CAPITAL, LLC, *et al.*

Debtors.

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Chapter 11

Case No. 12-12020 (MG)

(Jointly Administered)

Case No. 12-12032

**AFFIRMATION IN SUPPORT GRANTING RELIEF FROM THE AUTOMATIC
STAY PURSUANT TO BANKRUPTCY RULE 4001 AND 11 U.S.C. §362(d)**

EverBank by and through its attorneys, Shapiro, DiCaro & Barak, LLC, is seeking an Order vacating the automatic stay pursuant to 11 U.S.C. §362(d) nunc pro tunc as of May 14, 2012, and in support thereof, states as follows:

Shari S. Barak, Esq. an attorney at law duly admitted to practice law before this Court and the Courts of the State of New York, hereby affirms the following to be true under penalty of perjury:

I. RELIEF REQUESTED

1. This is a contested matter brought pursuant to the Federal Rules of Bankruptcy Procedure Rules 4001 and Section 362(d) of Title 11 of the United States Code (the "Bankruptcy

Code”), for an Order: (i) pursuant to Bankruptcy Rule 4001 and 362(d) seeking relief from the Automatic Stay as to real property known as 1917 East Concord Street, Orlando, Florida (the “Premises”), (ii) waiving the fourteen (14) day stay invoked pursuant to F.R.B.P. 4001(a)(3); and (iii) granting Movant such other and further relief as is just and proper under the circumstances of this case.

II. JURISDICTION

2. The Bankruptcy court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157 (b).

III. BACKGROUND

3. GMAC Mortgage Corp. dba ditech.com filed a petition for relief under Chapter 11 of the U.S. Bankruptcy Code on or about May 14, 2012. On May 14, 2012 an Order Directing Joint Administration of the Chapter 11 case of Residential Capital with 12-12032 was issued by this Court.

4. EverBank is the Movant of a note and mortgage executed to Fidelity Mortgage Services Inc. - Orlando by Derek Gay and Henry Haskins on February 25, 2003 and granting to Mortgage Electronic Registration Systems, Inc. as nominee for Fidelity Mortgage Services Inc. – Orlando a security interest in the property commonly known as 1917 East Concord Street, Orlando, Florida. Said Mortgage was assigned to EverHome Mortgage Company by Assignment dated September 17, 2010. EverBank is the successor by merger to EverHome Mortgage Company. Copies of the Note, Mortgage, Assignment and Certificate of Merger are annexed hereto as Exhibit “A”.

5. The mortgage held by Movant is in default under the Note and Mortgage for the installment due on May 1, 2010 and all subsequent monthly installments.

6. Movant commenced an action to foreclose its mortgage by filing a summons and complaint on March 4, 2011 in the state of Florida. A copy of said Complaint is annexed hereto Exhibit "B".

7. A foreclosure title search indicated that there is a second mortgage on the Property foreclosed held by Mortgage Electronic Registration Systems, Inc. as nominee for GMAC Mortgage Corporation d/b/a ditech.com. A copy of the foreclosure search is annexed hereto as Exhibit "C".

8. As of July 11, 2012, the payoff balance on the first mortgage held by Movant is approximately \$166,831.28.

9. According to the BPO which is annexed hereto as Exhibit "D" the fair market value of the Property is \$103,633.00.

10. Upon information and belief, Movant's claim against the Property exceeds the value of the property and, therefore, Debtor has little to no equity in the Property.

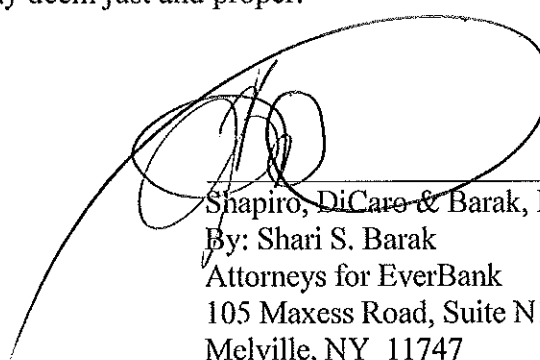
11. Upon information and belief, Debtor's subordinate mortgage adds little or no value to the bankruptcy estate and, therefore, the Property is not necessary or the reorganization of the Debtor.

12. It is respectfully submitted that good cause exists to vacate the automatic stay of 11 U.S.C. § 362 to allow EverBank to maintain a foreclosure action on its mortgage. It is further requested that this Court waive the fourteen (14) day stay invoked pursuant to F.R.B.P. 4001 (a)(3) so Movant may immediately commence and /or resume the foreclosure proceedings.

13. Movant further requests that the relief from the automatic stay be retroactive to a date prior to the commencement of its foreclosure action. Movant submits that there will be no prejudice to the Debtor if nunc pro tunc relief is granted by the Court.

WHEREFORE, EverBank respectfully requests that an Order be granted vacating the automatic stay as to nunc pro tunc as of May 14th, 2012 so as to permit the commencement, resumption or maintenance of mortgage foreclosure proceedings with respect to the Property, waiving the fourteen (14) day stay pursuant to F. R. B. P. 4001(a)(3); and for such other and further relief as the Court may deem just and proper.

Dated: August 11, 2012



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